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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	:	Before the Examiner:
Gusler et al.	:	Salce, Jason P.
	:	
Serial No.: 10/004,926	:	Group Art Unit: 2623
	:	
Filing Date: December 5, 2001	:	
	:	
Title: EFFICIENTLY	:	IBM Corporation
IDENTIFYING TELEVISION	:	Intellectual Property Law
STATIONS IN A USER	:	11400 Burnet Road
FRIENDLY ENVIRONMENT	:	Austin, Texas 78758

APPEAL BRIEF

Mail Stop Appeal Brief-Patents
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

I. REAL PARTY IN INTEREST

The real party in interest is International Business Machines Corporation, which is the assignee of the entire right, title and interest in the above-identified patent application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representative or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 4-8 are pending in the Application. Claims 1-3 and 9-43 were cancelled. Claims 4-8 stand rejected. Claims 4-8 are appealed.

IV. STATUS OF AMENDMENTS

Appellants have not submitted any amendment following receipt of the final office action with a mailing date of August 7, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent Claim 5:

In one embodiment of the present invention, a method for identifying television stations of interest in a user friendly environment comprises the step of receiving broadcast signals for a plurality of television stations. Specification, page 15, lines 10-11; Figure 3, step 301. The method further comprises displaying one or more folders associated with one or more classifications for the plurality of television stations on a display, where each of the one or more folders comprises one or more indications associated with one or more television stations. Specification, page 17, lines 3-7; Figure 3, step 303. The method further comprises determining whether the broadcast signals include tags for associating each of the plurality of television stations with one or more classifications. Specification, page 17, lines 1-3; Figure 3, step 302. Further, if the broadcast signals include the tags then the method further comprises the step of comparing the tags with a list of one or more classifications associated with the plurality of television stations. Specification, page 18, lines 8-14; Figure 3, step 304. Additionally, if there are differences between the list of one or more classifications in a database associated with the plurality of television stations and the tags then the method further comprises updating the list of one or more classifications associated with the plurality of television stations to become a new base set stored in the database. Specification, page 18, lines 21-24; Figure 3, step 306. Furthermore, if there are differences between the list of one or more classifications in a database associated with the plurality of television stations and the tags then the method further comprises displaying one or more folders associated with one or more classifications for the plurality of television stations on the display according to the new base set after the new base set has been processed.

Specification, page 19, lines 1-3; Figure 3, step 307.

VI. GROUND S OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 4-7 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Burnhouse et al. (U.S. Patent Application Publication No. 2002/0056104) (hereinafter "Burnhouse") in view of Arsenault et al. (U.S. Patent No. 6,728,966) (hereinafter "Arsenault").

B. Claim 8 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Burnhouse in view of Arsenault and in further view of Rashkovskiy (U.S. Patent Application Publication No. 2004/0034867) (hereinafter "Rashkovskiy").

VII. ARGUMENT

A. Claims 4-7 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Burnhouse in view of Arsenault.

The Examiner has rejected claims 4-7 under 35 U.S.C. §103(a) as being unpatentable over Burnhouse in view of Arsenault. Office Action (8/7/2008), page 2. Appellants respectfully traverse these rejections for at least the reasons stated below.

1. Burnhouse and Arsenault, taken singly or in combination, do not teach at least the following claim limitations.

a. Claim 5 is patentable over Burnhouse in view of Arsenault.

Appellants respectfully assert that Burnhouse and Arsenault, taken singly or in combination, do not teach "wherein if said broadcast signals include said tags then the method further comprises the step of: comparing said tags with a list of one or more classifications associated with said plurality of television stations" as recited in claim 5. The Examiner cites paragraphs [0036 and 0040] of Burnhouse as teaching the above-cited claim limitation. Office Action (8/7/2008), page 3. Appellants respectfully traverse.

Burnhouse instead teaches that CPU 29 generates a table of pointers 401 to the EPG stored in the memory. [0036]. Burnhouse further teaches that the table 401 is used for changing the order of channels or programs according to the information to be presented in the guide to the user. [0036]. Burnhouse additionally teaches that using the information downloaded from the satellite transmission, programming and channel selection information is provided to the viewer. [0040].

Hence, Burnhouse teaches a table of pointers used for changing the order of channels to be presented in a guide to a user. Further, Burnhouse teaches providing programming and channel selection information using the information downloaded from the satellite transmission.

There is no language in the cited passages that teaches comparing tags with a list of one or more classifications. Further, there is no language in the cited passages that teaches comparing tags with a list of one or more classifications associated with a plurality of television stations. Neither is there any language in the cited passages that teaches comparing tags with a list of one or more classifications associated with a plurality of television stations if the broadcast signals include the tags.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 5, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, Burnhouse teaches that the data stream sent from the satellite includes electronic programming guide (EPG) data. [0026]. Burnhouse further teaches that EPG data includes guide data, channel data and program data. [0033]. The Examiner asserts that the EPG data includes tags which refer to the category and subcategories of the programs. Office Action (7/12/2007), page 2; Office Action (8/7/2008), page 3. The Examiner further asserts that when a folder (e.g., drama folder) is displayed to the viewer, the EPG data must be parsed in order to display the appropriate programs (e.g., drama programs) in the appropriate category. Office Action (7/12/2007), page 2. However, the above-cited claim limitation recites comparing the tags (which are

included in the broadcast signals) with a list of one or more classifications. There is no comparison being made even under the Examiner's interpretation of Burnhouse. Parsing is not the same as comparing. Neither is there any discussion of comparing EPG data to a list of classifications.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 5, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Further, the Examiner asserts that EPG data (Examiner asserts that EPG data corresponds to the claimed tags) is compared to table 401. Office Action (8/7/2008), page 3. Appellants respectfully traverse. The Examiner states that when a user selects a category and subcategory, as discussed in connection with Figure 5, the table (table 401) is accessed. See, e.g., paragraphs [0041-0043]. Burnhouse teaches that once a category folder is selected, the corresponding sub-category folders are generated and displayed. [0043]. In displaying these sub-category folders, the Examiner asserts that they are generated via the use of table 401 as subcategory information is included in the program data. Office Action (8/7/2008), page 3; See paragraphs [0034-0035]. However, there is no comparison being made to the EPG data in order to generate these subcategory folders. Instead, the subcategory information is obtained from table 401, as admitted by the Examiner. There is no comparison being made.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 5, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Appellants further assert that Burnhouse and Arseneault, taken singly or in combination, do not teach "wherein if there are differences between said list of one or more classifications associated with said plurality of television stations and said tags then the method further comprises the steps of: updating said list of one or more classifications in a database associated with said plurality of television stations to

become a new base set stored in said database; and displaying one or more folders associated with one or more classifications for said plurality of television stations on said display according to said new base set after said new base set has been processed" as recited in independent claim 5. The Examiner cites column 6, lines 50-54 and column 7, lines 21-46 of Arsenault as teaching the above-cited claim limitations. Office Action (8/7/2008), pages 4-5.

Arsenault teaches that in order to aide the user in navigating the content available on such a system, a television program guide may be generated. Column 6, lines 50-52. Arsenault further teaches that content records are transmitted to describe the available content and allow the local receiver unit (IRD) 36 to build the program guide. Column 6, lines 52-54. Additionally, Arsenault teaches that these content records 100 are used to create informational displays in the program guide. Column 6, lines 55-59. Arsenault teaches that, for example, if a user requests a list of actors starring in a particular movie, a display could be created containing such a list. Column 6, lines 59-61. Additionally, Arsenault teaches that for example, if there are no content records 100 currently stored and a message is received to store the content "John Doe" as an "Actor" under "Credits" for the referring program ID=31, then the control circuit would create a new title 102 (e.g., an array of linked lists or a linked list of linked lists) called "Credits" (block 122). Column 7, lines 23-29. Further, Arsenault teaches that subsequently, the control circuit would insert a new label 104 (e.g., a head node) called "Actor" into the "Credits" title (block 124). Column 7, lines 29-31. Additionally, Arsenault teaches that further, the control circuit would create a new content record 100 containing "John Doe" (block 126) and the control circuit would link the content record 100 to the "Actor" label 104 and the referencing object 108 (block 128) containing a reference to ID=31. Column 7, lines 31-35.

Hence, Arsenault teaches receiving content records to describe the available content which is used to build the program guide. Further, Arsenault teaches that these content records are used to create informational displays in the program guide, such as a list of actors starring in a particular movie. Arsenault further teaches that if

there are no content records currently stored and a message is received to store the content (e.g., "John Doe" as an "Actor"), then a control circuit would create a new content record containing "John Doe" and link the content record to the "Actor" label.

There is no language in the cited passages that teaches updating a list of one or more classifications in a database. Neither is there any language in the cited passages that teaches updating a list of one or more classifications in a database associated with the plurality of television stations. Neither is there any language in the cited passages that teaches updating a list of one or more classifications in a database associated with the plurality of television stations to become a new base set stored in the database. Neither is there any language in the cited passages that teaches updating a list of one or more classifications in a database associated with the plurality of television stations to become a new base set stored in the database if there are differences between the list of one or more classifications associated with the plurality of television stations and the tags. Instead, Arsenault teaches that if there are no records currently stored, then a control circuit may create a new content record. A new content record is not created if there are differences between a list of classifications associated with television stations and the tags. Neither is creating a new content record the same as updating a list of classifications in a database or updating a list of classifications in a database to become a new base set stored in the database. Further, there is no language in the cited passages that teaches displaying one or more folders associated with one or more classifications for the plurality of television stations on the display according to the new base set after the new base set has been processed.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 5, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

- b. Claims 4 and 6-7 are patentable over Burnhouse in view of Arsenault for at least the reasons that claim 5 is patentable over Burnhouse in view of Arsenault.

Claims 4 and 6-7 each recite combinations of features of independent claim 5, and hence claims 4 and 6-7 are patentable over Burnhouse in view of Arsenault for at least the above-stated reasons that claim 5 is patentable over Burnhouse in view of Arsenault.

c. Claim 4 is patentable over Burnhouse in view of Arsenault.

Appellants respectfully assert that Burnhouse and Arsenault, taken singly or in combination, do not teach "wherein said one or more folders associated with said one or more classifications for said plurality of television stations on said display are displayed according to a base set if there are no differences between said list of one or more classifications associated with said plurality of television stations and said tags" as recited in claim 4 and similarly in claims 14 and 24. The Examiner cites Figures 3 and 5 and paragraph [0041] of Burnhouse as teaching the above-cited claim limitation. Office Action (7/12/2007), page 7; Office Action (8/7/2008), page 5. Appellants respectfully traverse.

Burnhouse instead teaches that at step 501, a folder-style guide is generated and presented to the user. [0041]. Burnhouse further teaches that the folder-style guide may display several folders, each folder representative of a different type or category of program. [0041]. Burnhouse additionally teaches that in one embodiment, the designated folder may have a title that indicates the type of program in the folder such as drama, sports, etc. [0041].

Hence, Burnhouse teaches displaying folders, where each folder is representative of a category or type of program.

There is no language in the cited passage or in the description of Figures 3 and 5 that teaches that folders associated with one or more classifications for a plurality of television stations on the display are displayed according to a base set. Neither is there any language in the cited passage or in the description of Figures 3 and 5 that teaches that folders associated with one or more classifications for a plurality of

television stations on the display are displayed according to a base set if there are no differences between the list of one or more classifications associated with the plurality of television stations and the tags.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 4, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

In response to Appellants' above arguments, the Examiner states:

As explained in the previous Office Action, a base set is representative of a category, while a sub-category is representative of a specific set. For example, if a user selects sports from the folder guide of Figure 9, all programs related to the base set of sports are displayed. Therefore, there is no difference between programs that can be further divided into subcategories, because only a category is selected, therefore teaching a base set relating to the selected category. Office Action (7/12/2007), page 3.

Appellants respectfully traverse. The Examiner has not provided any basis in fact and/or technical reasoning to support the assertion that a "base set," as defined in Appellants' Specification, refers to a category and that a "specific set," which is not used in Appellants' Specification, refers to a sub-category. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that a "base set," as defined in Appellants' Specification, refers to category. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must provide extrinsic evidence that must make clear that a "base set," as defined in Appellants' Specification, refers to category, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Since the Examiner has not provided any such objective evidence, the Examiner has not presented a *prima facie* case of anticipation for rejecting claims 4, 14 and 24. M.P.E.P. §2131.

Further, the Examiner has ignored portions of the above-cited claim limitation. Claim 4 recites that one or more folders associated with the one or more

classifications for the plurality of television stations on the display are displayed according to a base set if there are no differences between the list of one or more classifications associated with the plurality of television stations and the tags.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 4, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

d. Claim 6 is patentable over Burnhouse in view of Arsenault.

Appellants respectfully assert that Burnhouse and Arsenault, taken singly or in combination, do not teach "wherein said one or more folders associated with said one or more classifications for said plurality of television stations on said display are displayed according to a base set if said broadcast signals do not include said tags" as recited in claim 6. The Examiner cites paragraph [0053] of Burnhouse as teaching the above-cited claim limitation. Office Action (8/7/2008), page 5. Appellants respectfully traverse.

Burnhouse instead teaches that the category and subcategory folders may be created and deleted by a user, service provider, preprogrammed system, etc. [0053]. Burnhouse further teaches that the ability to configure may be partial, for example, a user may only be able to configure sub-category folders, or more complete, for example, all category and sub-category folders. [0053]. Additionally, Burnhouse teaches that the creation and deletion options may also be restricted to a particular user, service provider, network, etc. [0053]. In addition, Burnhouse teaches that for example, a password or other some other user recognition may be required for entering, creating or deleting category folders or sub-category folders. [0053].

Hence, Burnhouse teaches creating or deleting category and subcategory folders. Further, Burnhouse teaches that the creation and deletion options may also be restricted to a particular user, service provider, network, etc.

There is no language in the cited passage that teaches displaying the one or more folders associated with the one or more classifications for the plurality of television stations according to a base set if the broadcast signals do not include the tags.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 6, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

B. Claim 8 is not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Burnhouse in view of Arsenault and Rashkovskiy.

The Examiner has rejected claim 8 under 35 U.S.C. §103(a) as being unpatentable over Burnhouse in view of Arsenault and in further view of Rashkovskiy. Office Action (8/7/2008), page 6. Appellants respectfully traverse this rejection for at least the reasons stated below.

Appellants respectfully assert that Burnhouse, Arsenault and Rashkovskiy, taken singly or in combination, do not teach "receiving input to add or delete an indication associated with a particular television station associated with a particular folder; and adding or deleting said indication associated with said particular television station associated with said particular folder" as recited in claim 8 and similarly in claims 18 and 28. The Examiner cites paragraph [0020] of Rashkovskiy as teaching the above-cited claim limitations. Office Action (7/12/2007), page 12; Office Action (8/7/2008), page 7. Appellants respectfully traverse.

Rashkovskiy instead teaches that the user has selected favorite programs that are currently available in the illustrated example. [0020]. Rashkovskiy further teaches that the basis for defining favorites may be extremely varied. [0020]. Rashkovskiy additionally teaches that the user may simply enter what the user decides at any given instance of time, such as any given day of the week, are his or her favorite programs. [0020]. Furthermore, Rashkovskiy teaches that as another

example, the system can automatically discern what are the favorite programs on how frequently the user views a given program over varying time periods. [0020].

Hence, Rashkovskiy teaches allowing the user to select his/her favorite programs.

There is no language in the cited passage that teaches receiving input to add or delete an indication associated with a particular television station. Neither is there any language in the cited passage that teaches receiving input to add or delete an indication associated with a particular television station associated with a particular folder. Neither is there any language in the cited passage that teaches adding or deleting the indication associated with the particular television station. Neither is there any language in the cited passage that teaches adding or deleting the indication associated with the particular television station associated with the particular folder.

Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claim 8, since the Examiner is relying upon incorrect, factual predicates in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

VIII. CONCLUSION

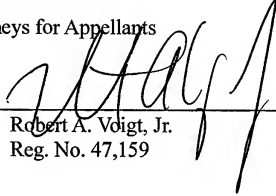
For the reasons noted above, the rejections of claims 4-8 are in error. Appellants respectfully request reversal of the rejections and allowance of claims 4-8.

Respectfully submitted,

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CLAIMS APPENDIX

4. The method as recited in claim 5, wherein said one or more folders associated with said one or more classifications for said plurality of television stations on said display are displayed according to a base set if there are no differences between said list of one or more classifications associated with said plurality of television stations and said tags.

5. A method for identifying television stations of interest in a user friendly environment comprising the steps of:

- receiving broadcast signals for a plurality of television stations;

- displaying one or more folders associated with one or more classifications for said plurality of television stations on a display, wherein each of said one or more folders comprises one or more indications associated with one or more television stations; and

- determining whether said broadcast signals include tags for associating each of said plurality of television stations with one or more classifications;

- wherein if said broadcast signals include said tags then the method further comprises the step of:

- comparing said tags with a list of one or more classifications associated with said plurality of television stations;

- wherein if there are differences between said list of one or more classifications associated with said plurality of television stations and said tags then the method further comprises the steps of:

- updating said list of one or more classifications in a database associated with said plurality of television stations to become a new base set stored in said database; and

- displaying one or more folders associated with one or more classifications for said plurality of television stations on said display according to said new base set after said new base set has been processed.

6. The method as recited in claim 5, wherein said one or more folders associated with said one or more classifications for said plurality of television stations on said display are displayed according to a base set if said broadcast signals do not include said tags.

7. The method as recited in claim 5 further comprising the steps of:
receiving input to add or delete a particular folder; and
adding or deleting said particular folder.

8. The method as recited in claim 5 further comprising the steps of:
receiving input to add or delete an indication associated with a particular television station associated with a particular folder; and
adding or deleting said indication associated with said particular television station associated with said particular folder.

EVIDENCE APPENDIX

No evidence was submitted pursuant to §§1.130, 1.131, or 1.132 of 37 C.F.R. or of any other evidence entered by the Examiner and relied upon by Appellants in the Appeal.

RELATED PROCEEDINGS APPENDIX

There are no related proceedings to the current proceeding.

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